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Message Text

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63
ACTION DLOS-05

INFO OCT-01 ISO-00 ACDA-10 AGR-10 AID-05 CEA-01 CEQ-01

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EB-07 EPA-04 ERDA-07 FMC-02 H-02 INR-07 INT-05 IO-10

JUSE-00 L-02 NSAE-00 NSC-05 NSF-02 OES-05 OMB-01

PA-02 PM-03 PRS-01 SP-02 SS-15 AF-06 ARA-10 EA-10

EUR-12 NEA-09 ERDE-00 FEA-01 TRSE-00 USIE-00 INRE-00

NSCE-00 SSO-00 /166 W
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O R 012025Z MAY 75
FM USMISSION GENEVA
TO SECSTATE WASHDC IMEDIATE 2546
INFO AMEMBASSY OSLO
AMEMBASSY OTTAWA
AMEMBASSY SANTIAGO

UNCLAS GENEVA 3116

FROM US DEL LOS

EO 11652: NA
TAGS: PLOS
SUBJ: TEXT OF AIDE-MEMOIRE ON STRAITS

REF: GENEVA 2757 AND 2954

1. AIDE-MEMOIRE CIRCULATED TO ALL DELEGATES IN COMMITTEE II CONTAINING THE FOLLOWING TEXT CONCERNING INTERNATIONAL STRAITS, WITH REFERENCE TO THE UK-FIJI CONSENSUS TEXT REPORTED REFTELS. SEPTEL CONTAINS OUR COMMENTS AND RECOMMENDATIONS.

2. BEGIN TEXT:
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APRIL 30, 1975.

AIDE MEMOIRE

THE DELEGATIONS OF CANADA, CHILE AND NORWAY HAVE BECOME AWARE OF A SO-CALLED "CONSENSUS TEXT" OF A "PRIVATE GROUP" ON STRAITS. THE THREE DELEGATIONS WISH TO BRING TO THE IMMEDIATE ATTENTION OF THE CHAIRMAN OF COMMITTEE II THEIR COMMON VIEW REGARDING THE UNACCEPTABILITY OF THIS TEXT INSOFAR AS IT PURPORTS TO MODIFY THE CUSTOMARY DEFINITION OF INTERNATIONAL STRAITS AS WELL AS TO CREATE ENTIRELY NEW CATEGORIES OF SUCH STRAITS.

CANADA, CHILE AND NORWAY CONSIDER THAT THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE IN THE CORFU CHANNEL CASE OF 1949, AS WELL AS THE REPORT OF THE INTERNATIONAL LAW COMMISSION OF 1956 AND THE 1958 CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE HAVE CLEARLY ESTABLISHED THE LEGAL AND GEOGRAPHICAL NATURE AND CHARACTERISTICS OF THOSE BODIES OF WATER THAT ARE TO BE TREATED AS INTERNATIONAL STRAITS. ARTICLE 16 (4) OF THE 1958 CONVENTION ON THE TERRITORIAL SEA MAKES CLEAR THAT INTERNATIONAL STRAITS ARE ONLY THOSE THAT LIE WITHIN THE TERRITORIAL SEA OF ONE OR MORE STATS. THE "CONSENSUS" TEXT CLEARLY ENVISAGES THE CHARACTERIZATION OF STRETCHES OF INTERNAL WATERS AS INTERNATIONAL STRAITS UNDER THE PROPOSED DEFINITION. MOREOVER, IN SO DOING, IT REDEFINES STRAITS IN A MANNER WHICH COULD ONLY CREATE CONFUSION AND GIVE RISE TO OBJECTIONS ON THE PART OF MANY STATES. THIS COULD CONTRIBUTE TO CONFLICTS RATHER THAN TO THE RESOLUTION OF CONFLICTS.

THE PROPOSED NEW DEFINITION OF STRAITS WOULD MOREOVER NEGATE THE REGIME OF INTERNAL WATERS ALREADY ESTABLISHED BY 41 STATES ON THE BASIS OF THE STRAIGHT BASELINE SYSTEM ALONG THEIR COASTS ESPECIALLY WHERE THERE IS A FRINGE OF ISLANDS IN ACCORDANCE WITH THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE IN UNCLASSIFIED

THE ANGLO-NORWEGIAN CASE AND THE 1958 CONVENTION ON THE TERRITORIAL SEA.

WITHOUT DISCUSSING AT THIS POINT THE QUESTION OF THE PARTICULAR REGIME WHICH SHOULD APPLY IN STRAITS USED FOR INTERNATIONAL NAVIGATION, CANADA, CHILE AND NORWAY WISH TO UNDERLINE THE FACT THAT THERE IS PRACTICALLY UNIVERSAL AGREEMENT ON THE PROPOSITION

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THAT AN INTERNATIONAL STRAIT IS ONE THAT CONNECTS ONE PART OF THE HIGH SEAS WITH ANOTHER PART OF THE HIGH SEAS AND THAT THERE ARE MANY STATES THAT ARE PREPARED TO ACCEPT THAT AN INTERNATIONAL STRAIT CAN ALSO BE ONE THAT CONNECTS ONE PART OF THE HIGH SEAS WITH THE TERRITORIAL SEA OF A FOREIGN STATE. WHATEVER THE RESOLUTION OF THIS PROBLEM MAY BE IN THE NEW CONVENTION ON THE LAW OF THE SEA AS OPPOSED TO THAT WHICH WAS RETAINED IN ARTICLE 16 (4) OF THE TERRITORIAL SEA CONVENTION, IT WOULD BE LEGALLY AND POLITICALLY ERRONEOUS TO ENVISAGE NEW CATEGORIES OF STRAITS. THEREFORE, THE LAST PHRASE OF ARTICLE I, PARAGRAPH 3 OF THE ANONYMOUS PAPER ("BETWEEN THE HIGH SEAS AND A STATE BORDERING THE STRAIT") AS WELL AS THE LANGUAGE OF ARTICLE 7 WHICH REFERS TO STRAITS "OTHER". THAN THOSE DEFINED IN ARTICLE 1, HAVE NO PLACE IN THIS CHAPTER.

THE THREE DELEGATIONS SUBMIT THAT A PROPER DEFINITION OF AN INTERNATIONAL STRAIT COULD READ AS FOLLOWS:

"AN INTERNATIONAL STRAIT IS A NATURALLY FORMED STRETCH OF WATER BETWEEN LAND FORMATIONS WHICH:

A) I) LIES WITHIN THE TERRITORIAL SEA OF ONE MORE STATES AT ANY POINT IN ITS LENGTH AND

II) CONNECTS....

B) HAS BEEN TRADITIONALLY USED FOR INTERNATIONAL NAVIGATION."
END TEXT.DALE
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